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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3625 of 2006
Date of decision: 8.10.2007

M/s Kumar Gas Company **...Petitioner**

Versus

Manohar Lal Bhopal **...Respondent**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Puneet Jindal, Advocate for the petitioner.

Ms. J. J. Kaur, Advocate for the respondent.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order passed by the learned Rent Controller whereby application filed by the petitioner/tenant for leave to defend has been rejected.

2. The dispute arose out of Eviction Petition filed by the respondent/landlord against the petitioner under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act") which provides for summary trial in case eviction is sought by a Non-resident Indian for his personal necessity. In terms of the provisions of the Act, petitioner moved an application for leave to contest the ejectment petition controverting the claim made in the petition of bonafide need of the respondent/landlord. In the application it was alleged that there are other shops lying vacant in the big shopping complex owned by the respondent/landlord, which could very well be used by him for his business. It is further stated in the petition that even after the rejection of the application filed by the petitioner for leave to defend, two shops bearing No.2 and 12 on the ground floor were vacated by the tenants and the same had been let out by the respondent/landlord to other tenants by increasing the rent. Learned counsel for the petitioner relied upon the judgment in **Baldev Singh Bajwa Vs. Monish Saini 2005 (2) Rent Law Reporter 488.**

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3. In response to contention of the petitioner, learned counsel for the respondent/landlord submitted that entire shops in the building are not owned by the respondent/landlord as in the family settlement regarding the building in question, only shops No. 3, 4, 15, 16 and 27 had come to the share of the respondent/landlord and none of them is on the ground floor. As the respondent/landlord, being senior citizen, cannot carry on his business on the Ist or IInd floor, he needed premises on the ground floor and that is why the eviction petition was filed, which is bonafide. He further denied any subsequent vacation and letting out of premises in the building as alleged by the petitioner in the petition.

4. I have heard learned counsel for the parties and perused the paper book.

5. Hon'ble the Supreme Court in Baldev Singh Bajwa's case (supra), opined as under:-

> "We cannot subscribe to the submission of the learned counsel appearing for the respondents/ landlords, that if the inquiry in the allegation of landlord's need regarding the bona fide and genuineness is permitted, the legislative intent of immediate delivery of possession of the accommodation owned by them would be defeated.
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> It is further provided that the procedure which shall be followed in deciding the application would be as is being practiced by Court of Small Causes. No appeal or second appeal is provided. From the aforesaid, it is absolutely apparent that even when leave would be given to the tenant to contest, legislatures have taken care of expeditious disposal of the petition for ejectment filed by the NRI landlord. Trial of the issue of bona fide requirement, of the landlord in the procedure prescribed would not take much time and thus we cannot accept the argument that the phrase "required" used by the legislature in Section 13-B would not mean bona fide or genuine requirement and the Section has to be construed as and

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when the allegation is made by the landlord of his need, it is to be taken as gospel truth and the tenant's right to defend on that count is completely extinguished and given a go-by. We do not think High Court is right in holding that mere prayer of the NRI landlord that tenanted premises is required by him or his dependent living with him entails decree of eviction on the mere allegation of requirement and no leave to contest can be given in respect of cases which are covered by various provisions restricting the right of the landlord to deal with the premises taken possession of by him in pursuance of the decree of eviction passed by the Controller under Section 13-B of the Act of 1949. We hold that allegations made by the NRI landlord of his requirement shall be presumed to be genuine and bona fide unless rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the state of `leave to contest' before the Controller. We feel any other interpretation would completely whittled down and deny the tenant's right to show and prove that landlord does not in fact, or in law require suit premises.

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On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession (permission?) is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that:- (i) he is a NRI; (ii) that he has return to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlord's application should confine to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave

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to contest the application filed under Section 13-B circumscribe to the grounds and inquiry to the aspects specified in the Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall, be considered by the Controller."

6. Keeping in view the judgment of Hon'ble the Supreme Court in Baldev Singh Bajwa's case (supra) and by applying the principles laid down therein in the facts and circumstances of the present case, I am of the view that certain new facts regarding family settlement and subsequent eviction and letting out of shops having been pleaded before this Court, which were not pleaded before the Court below, it would be appropriate to remit the matter back to the Rent Controller for reconsideration of the application filed by the petitioner for leave to defend in the light of discussions made above. Parties through their counsel are directed to appear before the Rent Controller on October 31, 2007 for further proceedings.

7. The revision petition is disposed of accordingly.

October 08, 2007 **(Rajesh Bindal)**
Pka **Judge**